



9/13/10

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Attorney Ref.: RD 443
)	
Inventor: D.D. WOODS)	Examiner: Phu Hoang NGUYEN
)	
Application No.: 10/538,516)	Group Art Unit: 1791
)	
Filed: August 1, 2006)	Confirmation No.: 3146
)	
For: Smoking Articles)	Date Submitted: September 10, 2010
)	

Mail Stop PATENT EXT.
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

**APPLICATION FOR PATENT TERM ADJUSTMENT UNDER
37 C.F.R. § 1.705(b) AND 35 U.S.C. § 154**

Dear Sir:

The following remarks are submitted in response to the Determination of Patent Term Adjustment ("PTA") under 35 U.S.C. § 154(b) (the "Determination"), which was mailed with a Notice of Allowance on June 10, 2010, in the above-referenced patent Application. The Determination stated that the PTA is 674 days. The Applicants, however, contend that the current PTA should be 681 days and offer an explanation for this number below. Accordingly, the Applicants seek a Reconsideration of PTA in accordance with 37 C.F.R. § 1.705(b). No Terminal Disclaimer was filed. Per 37 C.F.R. § 1.18(e), a payment of \$200.00 is accompanied with this response.

According to *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010), the Patent Office has been incorrectly determining PTA's. The Applicants contend that the Determination was made in error and respectfully request that a new determination be made in accordance with the *Wyeth* decision and as outlined below.

The *Wyeth* court construed 35 U.S.C. § 154(b) to be understood by a simple equation: Delays by the Patent Office missing a variety of deadlines as prescribed by 35 U.S.C. § 154(b)(1)(A) ("A Delays") plus Delays by the Patent Office for not issuing a Patent within three years of the filing date as prescribed by 35 U.S.C. § 154(b)(1)(B) ("B

Delays”) minus the number of days due to A Delays that also overlap the B Delays (“Overlap”) minus the Applicants’ Delays equals the PTA. In other words:

$$PTA = A \text{ Delays} + B \text{ Delays} - \text{Overlap} - \text{Applicants' Delay}$$

It should be noted that all delays are measured in terms of days.

The table in Appendix A, submitted herewith, outlines the relevant dates of the various actions by the Office and the Applicants that occurred during the prosecution of the present application, which may have resulted in delays of one form or another. The calculations presented herein and summarized in Appendix A assume that the present application will issue on January 4, 2011. This date is the Tuesday prior to the four-month deadline for issuing a patent after the Applicants have paid the issue fee.

As summarized in the table, the only A Delays were due to the Patent Office issuing a First Action 681 days after fourteen months had passed from the initial filing of the present application.

The B Delays potentially total 521 days. This number comes from the fact that, if the patent issues on January 4, 2011, the Patent Office will miss the three-year deadline prescribed by 35 U.S.C. § 154(b)(1)(B) by 521 days. This delay will be addressed when the actual issue date has been established.

The Applicants delayed a total 0 days.

The total current Patent Term Adjustment, which is reflected in the bottom line of column “A Delay” of the table, is 681 days.

Accordingly, the Applicants respectfully request that the PTA be adjusted to 681 days.

Respectfully submitted,

MIDDLETON REUTLINGER

A handwritten signature in black ink, appearing to read 'C. I. Sherman', written over a horizontal line.

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Date: September 10, 2010

Appendix A

Activity	Issue/Filing Date	Deadline	A Delay	B Delay	Overlap	Applicants' Delay
Filing Date:	August 1, 2006					
First Action Mailed:	August 12, 2009	October 1, 2007	681		-11	
Response to First Action:	September 14, 2009	November 12, 2009				
Supp. Resp. to First Action						
Second Action Mailed:	December 14, 2009	January 14, 2010				
Response to Second Action:	March 5, 2010	March 14, 2010				
Supp. Resp. to Second Action						
Third Action Mailed:						
Response to Third Action:						
Supp. Resp. to Third Action:						
Fourth Action Mailed:						
Response to Fourth Action:						
Supp. Resp. to Fourth Action:						
Fifth Action Mailed:						
Response to Fifth Action:						
Supp. Resp. to Fifth Action:						
Sixth Action Mailed:						
Response to Sixth Action:						
Supp. Resp. to Sixth Action:						
Seventh Action Mailed:						
Response to Seventh Action:						
Supp. Resp. to Seventh Action:						
Eighth Action Mailed:						
Response to Eighth Action:						
Supp. Resp. to Eighth Action:						
Notice of Allowance	June 10, 2010	July 5, 2010		521		
Projected Issue Fee Paid:	September 10, 2010	September 10, 2010				
Projected Issue Date:	Tuesday, January 04, 2011	January 10, 2011				
Three year deadline:		August 1, 2009				
First RCE Filed:						
Delay Totals:			681	521	-11	0
Patent Term Adjustment (days):			1,191			